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PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Anaconda Sports, Inc.

Serial No. 75/198,280

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Before Cissel, Hohein and Hairston, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Anaconda Sports, Inc. to register the mark ANACONDA SPORTS and design as shown below,

for "athletic clothing for athletes, officials and coaches, namely team uniforms, hats, caps, shoes, socks, gloves, belts, headbands, jackets, warm-up suits, sweat shirts, sweat pants, sweaters, vests, parkas, ponchos, t-shirts, golf shirts, sport shirts, running shorts, swim shorts, sliding shorts, baseball shorts and softball shorts."[1] Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the mark ANACONDA FOUNDATION, which is registered for "T-shirts; shirts; tops; bottoms; hats; footwear; shoes; aprons; bandannas; headwear; swimwear; bathrobes; beach coverups [sic]; beach wear; clothing belts; cloth bibs; blazers; blouses; boas; body suits; body shapers; boleros; bonnets; booties; boots; underwear; capes; cardigans; coats; collars; masquerade costumes and masks; coverups [sic]; coveralls; cravats; clothing ties; cuffs; cummerbunds [sic]; dresses; gowns; ear muffs; espadrilles; vests; frocks; gauchos; gloves; shorts; head bands; hosiery; infantwear; jackets; jeans; jogging suits; jumpsuits; kerchiefs; kilts; kimonos; knickers; lingerie;

[1] Serial No. 75/198,280; filed November 6, 1996; alleging dates of first use of March 15, 1993. The word "SPORTS" has been disclaimed apart from the mark as shown.

jumpers; pants; mantillas; mittens; moccasins; muu muus; neckwear; overalls; pantsuits; parkas; play suits; ponchos; pullovers; rainwear; robes; sandals; sleepwear; smocks, suits; suspenders; sweat suits; sweaters; tops; trousers; slacks; tunics; turbans; visors; veils; scarfs [sic]; and wrist bands,"[2] as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

We turn first to a consideration of the respective goods. It is well settled that the issue of likelihood of confusion must be resolved on the basis of the goods as they are broadly stated in the respective application and registration. Since there is no limitation in registrant's identification of goods, we must presume that registrant's clothing items move in all channels of trade normal for such goods, and that the goods would be purchased by all potential customers. In re Elbaum, 211 USPQ 630, 640 (TTAB 1981). Thus, for purposes of our likelihood of confusion analysis, certain of registrant's goods are identical (i.e. T-shirts; hats; headbands; shorts; shoes; and sweaters) or otherwise closely related (i.e. jogging suits; sweat suits;

[2] Registration No. 2,061,622 issued May 13, 1997.

and wrist bands) to applicant's goods. In other words, we must presume that such clothing items are for athletes, officials and coaches, and are sold in the some of the same outlets as applicant's goods.[3]

Turning next to a consideration of the marks, we begin our analysis of whether confusion is likely by keeping in mind two propositions set forth by the Court of Appeals for the Federal Circuit. First, "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ 1698, 1700 (Fed. Cir. 1992). Second, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their

[3] We should point out that if some of the goods covered by the cited mark support a finding of likelihood of confusion with respect to the goods in the involved application, even though other non-related or more remotely related goods are also covered by the cited mark, the prohibitions of Section 2(d) of the Trademark Act apply and will bar registration without the need to rule on the other goods covered by the cited mark. See Shunk Manufacturing Co. v. Tarrant Manufacturing Co., 137 USPQ 881, 318 F.2d 328 (CCPA 1963).

entireties." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

In comparing applicant's mark ANACONDA SPORTS and design with registrant's mark ANACONDA FOUNDATION, we find the commercial impressions engendered by the marks to be sufficiently similar that, when the marks are used in connection with the same and/or closely related goods, consumers are likely to be confused. In the present case, applicant's mark is dominated by the word ANACONDA which is very similar to registrant's mark ANACONDA FOUNDATION. Applicant has disclaimed exclusive rights to use SPORTS, thereby acknowledging the descriptiveness of the word. Further, although the snake design is a noticeable part of applicant's mark, it is insufficient to distinguish the marks because it reinforces the connotation of the word ANACONDA. In finding that the marks are similar, we have kept in mind the normal fallibility of human memory over time and the fact that the average consumer retains a general rather than a specific impression of trademarks encountered in the marketplace.

In sum, we conclude that consumers familiar with registrant's mark ANACONDA FOUNDATION for T-shirts; hats; headbands; shorts; shoes; sweaters; jogging suits; sweat suits; and wrist bands, would be likely to believe, upon

encountering applicant's mark ANACONDA SPORTS and design for identical and otherwise closely related clothing items, that such goods originated with or were somehow associated with or sponsored by the same entity.

Finally, it is well settled that, if there is any doubt on the issue of likelihood of confusion, that doubt must be resolved against the newcomer and in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1986).

Decision: The refusal to register is affirmed.